

**STATE BOARD OF ELECTIONS
STATE OF ILLINOIS**



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Rupert T. Borgsmiller**

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BOARD MEMBERS
William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers
Betty J. Coffrin
Ernest L. Gowen
Judith C. Rice
Bryan A. Schneider
Charles W. Scholz

**AGENDA
State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Monday, July 9, 2012
10:00 a.m.**

**James R. Thompson Center – Suite 14-100
Chicago, Illinois
and via videoconference
2329 S. MacArthur Blvd.
Springfield, Illinois**

Call State Board of Elections to order.

- 1. Recess the State Board of Elections and convene as the State Officers Electoral Board.**
- 2. Approval of the minutes from the June 19 meeting.**
- 3. Call cases and accept appearances - objections to independent and new party candidate nominating petitions for the November 6, 2012 General Election;**
 - a. *Direso v. Oberline*, 12SOEBGE101;
 - b. *Worthy v. Pierce*, 12SOEBGE102;
 - c. *Chiles v. Dearing*, 12SOEBGE103;
 - d. *Rakers v. McKerrow*, 12SOEBGE104;
 - e. *Wiss v. Norris*, 12SOEBGE105;
 - f. *Tozer v. Mazo*, 12SOEBGE106;
 - g. *Cushman v. Stufflebeam*, 12SOEBGE107;
 - h. *Alexander v. Bradshaw*, 12SOEBGE108;
 - i. *James v. Gray*, 12SOEBGE109;
 - j. *Carruthers v. Percy*, 12SOEBGE110;
 - k. *DeVivo v. Tucek*, 12SOEBGE504;
 - l. *Abbott & Cabay v. Marks*, 12SOEBGE505;
 - m. *Storm & Eck v. Hartman*, 12SOEBGE506;
 - n. *McSweeney v. Beaubien*, 12SOEBGE507;
 - o. *Sloan v. Kossack*, 12SOEBGE508;
 - p. *Hartweg v. Kay (Karkusiewicz)*, 12SOEBGE509;
 - q. *Uzzell v. Evans*, 12SOEBGE510;
 - r. *Douglas & Posateri v. Reyes*, 12SOEBGE511;
 - s. *Sherman v. Clymer & Goode*, 12SOEBGE512;
 - t. *Sherman v. Hawkins*, 12SOEBGE513;
 - u. *Sherman v. Anderson & Boyd*, 12SOEBGE514;
 - v. *Sherman v. Alexander & Mendoza*, 12SOEBGE515.

4. Approve the Rules of Procedure for the State Officers Electoral Board.
5. Authorize the General Counsel to appoint Hearing Examiners as required.
6. Consideration of subpoena requests related to objections to fill vacancies in nomination for the November 6, 2012 General Election:
 - a. *Morris v. Montalvo*, 12SOEBGE500;
 - b. *Imhoff v. Collins*, 12SOEBGE502;
 - c. *Stanley v. Roman*, 12SOEBGE503.
7. Consideration of objections to resolutions to fill vacancies in nomination for the November 6, 2012 General Election;
 - a. *Witzleb v. Boken Jr.*, 12SOEBGE501.
8. Recess the State Officers Electoral Board until July 16, 2012 at 10:30 a.m. or call of the Chairman, whichever occurs first.
9. Reconvene as the State Board of Elections.
10. Other business.
11. Adjourn until July 16, 2012 at 10:30 a.m. or call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD
Tuesday, June 19, 2012

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Judith C. Rice, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Jim Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

The State Officers Electoral Board convened at 10:55 a.m. via videoconference with the Springfield office. Chairman McGuffage, Vice Chairman Smart and Members Byers, Gowen, Schneider and Scholz were present in Chicago. Member Coffrin was present in Springfield and Member Rice present via teleconference.

Member Scholz moved to approve the minutes from the January 12, February 2 and March 12 meetings as presented. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel called the cases and accepted appearances for the following objections to resolutions to fill vacancies in nomination for the November 6, 2012 General Election;

- a. *Ostendorf & Hocker v. Polites*, 12SOEBGE100 – John Fogarty present for the objector and Mike Kasper present for the candidate;
- b. *Morris v. Montalvo*, 12SOEBGE500 – Mike Kasper and James Nally present for the objector and John Fogarty present for the candidate;
- c. *Witzleb v. Boken, Jr.*, 12SOEBGE501 – John Fogarty present for the objector and Mike Kasper present for the candidate;
- d. *Imhoff v. Collins*, 12SOEBGE502 – Mike Kasper present for the objector and Vincent Geisler present for the candidate;
- e. *Stanley v. Roman*, 12SOEBGE503 – Mike Kasper present for the objector and Christine Benson present for the candidate.

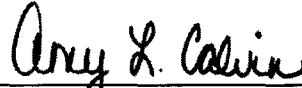
The General Counsel presented the Rules of Procedure and noted that the timeframes for subpoena requests, affidavits and a couple of changes to Rule 9 were the only modifications from the previous approved Rules of Procedure. Vice Chairman Smart moved to approve the Rules of Procedure as presented. Member Schneider seconded the motion which passed by roll call vote of 8-0.

The General Counsel submitted a memo requesting authorization to appoint hearing officers and assigning to them their respective cases. Member Schneider moved to authorize the General

Counsel to appoint the hearing officers as required. Member Byers seconded the motion which passed by roll call vote of 8-0.

With there being no further business before the State Officers Electoral Board, Member Scholz moved to recess until July 9, 2012 at 10:00 a.m. or until the call of the Chairman, whichever occurs first. Vice Chairman Smart seconded the motion which passed unanimously. The meeting recessed at 11:00 a.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert T. Borgsmiller, Executive Director

PROPOSED RULES OF PROCEDURE

ADOPTED BY THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATING PETITIONS OF NEW POLITICAL PARTY AND INDEPENDENT CANDIDATES SEEKING PLACEMENT ON THE BALLOT FOR THE NOVEMBER 6th, 2012 GENERAL ELECTION

Pursuant to Section 10-10 of the *Election Code* (10 ILCS 5/10-10), the State Board of Elections, acting in its capacity as the State Officers Electoral Board (the "Board"), a duly constituted electoral board under Section 10-9 of the *Election Code*, hereby adopts the following rules of procedure:

1. EXPEDITED PROCEEDINGS

On all hearing dates set by the Board or its designated hearing examiner, (other than the Initial Hearing of the Board) the objector and the candidate (at times individually referred to as "party" or collectively referred to as the "parties") shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the initial hearing or future hearings except for good cause shown. The parties shall make themselves reasonably available by telephone (including cellular phone) during the day and at least until 7:00 P.M (or as otherwise directed by the Board or hearing examiner) for receipt of notice from the Board, from the hearing examiner, or from opposing parties during the course of these proceedings. If the Board or hearing examiner has made reasonable attempts to contact a party by telephone, cellular phone, fax or by e-mail at the number(s) or address(s) provided by that party and the party cannot be contacted or fails to respond to such contacts, the party will be deemed to have received constructive notice of the proceedings and the proceedings may go forward without the presence of that party. If a party has received actual or constructive notice of a hearing and fails to appear, the failure to appear shall constitute acquiescence by such party as to any action taken at that hearing or any agreement made by and between the parties present at the hearing.

2. CASE MANAGEMENT CONFERENCE (Initial Hearing)

The Board will notify the parties to appear at a specified time and place for a conference with the General Counsel of the State Board of Elections, his designee or the Board's appointed hearing examiner for the purpose of considering issues such as scheduling, attendance of witnesses, filing of briefs and motions, discovery matters and any other proceedings intended to aid in the expeditious resolution of the objection. This is usually done at the same time as the initial hearing before the State Officers Electoral Board. Additional case management conferences may be called by the Board, the General Counsel or the appointed Hearing Examiner when necessary. If an objector fails to appear at the initial hearing after having been sent due notice, the Board may dismiss the objection for want of prosecution. If a candidate fails to appear at the initial

hearing, he/she will be bound by any decisions made by the Board, the General Counsel or the designated hearing examiner.

3. APPEARANCE

The candidate or objector may appear in person on his or her own behalf and participate in any proceeding before the Board or may appear by an attorney licensed to practice law in the State of Illinois. Non-attorneys other than a party appearing pro se shall not appear or participate (including the offering of any argument or advocating a position to the Board, any counsel to the Board or the Board's appointed Hearing examiner) in the Board's hearings on behalf of either the candidate or the objector, except that non-attorneys may participate as observers or coordinators at any records examination on behalf of any party. Out of state attorneys may appear subject to Part 125.60(b) of the Rules and Regulations of the State Board of Elections. A party must file with the Board and other parties of the case a written appearance stating his or her name, address, telephone or cellular phone number, and, if available, a fax number and e-mail address as well as the name and contact information of his or her attorney, where appropriate.

Though every effort will be made by the Board or its designated Hearing Examiner to keep parties informed of upcoming events, parties shall be responsible for periodically checking the Board's website, with the Board's staff or the Board's hearing examiner to keep apprised of scheduled events in their case. The failure of a party to receive actual notice of an event posted on the Board's website regarding their case shall not prevent such event from proceeding as scheduled nor shall it invalidate any action taken at such event.

4. AUTHORITY OF THE BOARD

The Board itself or through its duly appointed hearing examiner if applicable; (See Part 5 below) shall conduct all hearings and take all necessary action to avoid delay, to maintain order, to ensure compliance with all notice requirements, and to ensure the development of a clear and complete record. If a Hearing Examiner has been duly appointed, the Hearing Examiner shall preside over all such hearings. At the discretion of the Board or the hearing examiner, hearings may be conducted in two or more locations connected by telephonic or video conference; however, any witness who is going to provide verbal testimony must appear at the same location as the requesting party or its counsel (unless otherwise agreed by such requesting party or their counsel, and the hearing examiner or Board). The Board or its designated hearing examiner shall have all powers necessary to conduct a fair and impartial hearing including, but not limited to:

- (a) Administer oaths and affirmations;
- (b) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, provide for the taking of testimony by deposition if necessary, and in general conduct the proceedings according to recognized principles of administrative law and the provisions of these Rules;

- (c) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Direct parties to appear and confer for the stipulation of facts or simplification of issues, and otherwise conduct case management conferences;
- (f) Dispose of procedural requests or similar matters;
- (g) Issue subpoenas and rule upon objections to subpoenas (subject to the provisions of paragraph 8 below) and discovery requests;
- (h) Consider and rule upon all motions presented in the course of the proceedings except that a Motion to Strike or Dismiss an Objection or a Motion for Directed Verdict or its administrative equivalent can only be ruled upon by the Board. Unless otherwise directed by the hearing examiner, the hearing of the objection will proceed despite the filing of the above Motions;
- (i) Consider such competent and relevant evidence as may be submitted, including, but not limited to, documentary evidence, affidavits and oral testimony; and
- (j) Enter any order that further carries out the purpose of these Rules.

The Board may on its own motion, strike any objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8. Objections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator. In addition, the Board on its own motion may strike any portion of an objection that it determines to be not well grounded in fact and/or law.

5. HEARING EXAMINERS

In view of the time limitations and the amount of evidence to be presented, the Board may appoint a hearing examiner in any case which the Board deems such an appointment necessary or expedient. Any hearing examiner so appointed shall have the duties and powers of the Board as set forth in these rules, except that a hearing examiner shall not have the power to rule upon any motion which would be dispositive of the objection or issue a final decision. In addition, any hearing examiner appointed by the Board is authorized and directed (a) to hold a full hearing and receive all evidence and argument, (b) to prepare a record of the hearing including a full transcript of court reporter stenographic notes of the proceedings (where the presence of a court reporter was determined necessary by the hearing examiner), (c) to prepare an outline of all the evidence, issues and argument (Such outline may be incorporated into the written recommendation.) and (d) to prepare recommendations, and proposal for decision for submission to the Board, the General Counsel and the parties. In cases where a hearing examiner is

appointed, the Board shall not issue a final decision until a proposal for decision submitted by the Hearing Examiner is served upon the parties and an opportunity is afforded each party to take exceptions, whether written or oral, and, if the Board so permits, oral argument before the Board. The Board will make a final ruling on the objection and may consider the following as part of its consideration and appraisal of the record: the petition and the objection thereto, the hearing transcript, the hearing examiner's outline, recommendations and proposal for decision, and any exceptions, briefs, exhibits, offers of proof or arguments presented by the parties.

6. SERVICE OF DOCUMENTS

All briefs, notices, documents, pleadings, answers and correspondence shall be served upon the opposing parties, or their attorneys if represented by counsel, and filed with the General Counsel and the hearing examiner where appropriate. All briefs, notices, documents, pleadings, answers and correspondence may be sent by telefax or e-mail attachment if the other receiving party or his or her representative agrees. In those instances where a telefax or an unsigned e-mail communication is used, a hard copy shall also be sent by regular mail. The date the telefax or e-mail attachment is sent shall be deemed the date notice is given.

7. MOTIONS PRACTICE

All Motions Generally

- (a) If a hearing examiner has been appointed, motions shall be addressed to the hearing examiner, with copies provided to the General Counsel's office in Springfield. The hearing examiner will decide motions in due course and will recommend a decision on dispositive motions to the Board. If a hearing examiner has not been appointed, motions will be filed with the General Counsel and will be decided by the Board.
- (b) The Board will decide all motions in cases in which no hearing examiner has been appointed. In accordance with the Open Meetings Act, the Board may meet by video conference call to rule on motions. The Chairman may appoint a member of the Board or the staff of the Board to hear and decide for the Board all motions except dispositive motions. Motions addressed to the Board shall be thoroughly briefed so as to minimize the time needed for oral argument. Such argument shall be permitted at the Board's discretion.
- (c) Motions for continuance are discouraged and will be granted only in extreme circumstances.

Dispositive Motions

- (d) The Board will decide all dispositive motions upon receipt of the recommendation of a hearing examiner and/or the General Counsel.

- (e) Preliminary motions not already ruled upon including motions for summary judgment (or similar motions) and objections to an objector's petition in the nature of a motion to dismiss or strike the objections will be heard prior to the case on the merits if so directed by the Chairman. The Board may, in its discretion, reserve rulings on preliminary motions and objections pending further hearing thereon.
- (f) The Board may, upon its own motion with notice to the parties, dismiss for failure to prosecute an objection in any case where the objector fails to attend the initial meeting of the Board at which the objection is called or repeatedly fails to attend proceedings ordered by the Board or its duly appointed hearing examiner.

8. SUBPOENAS

Any party desiring the issuance of a subpoena shall submit a request to the hearing examiner. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery, however all depositions can be used for evidentiary purposes) or hearing and/or subpoenas *duces tecum* requiring the production of such books, papers, records and documents as may relate to any matter under inquiry before the Board. The request must be filed no later than 5PM on **Monday, July 16th** and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the hearing examiner. The hearing examiner shall submit the same to the Board (via General Counsel) no later than 3PM on **Thursday, July 19th**. The Board shall meet on **Monday, July 23rd** (time TBD) to consider the same, and such request shall only be granted upon a minimum five vote majority of the Board. The opposing party may submit a response to the request; however any such response shall be given to the hearing examiner no later than 12PM on **Wednesday, July 18th**, who shall then transmit it to the Board with the subpoena request. In addition, both parties shall be provided an opportunity to appear before the Board and at the Board's discretion may give oral argument. The Board may limit or modify the subpoena based on the arguments of the parties or on their own initiative. Any subpoena request received subsequent to 5PM on **July 16th** shall only be considered upon approval of the Board and only if the requesting party demonstrates to the satisfaction of the Board, that the need for the subpoena was not known on or before the **July 16th** deadline. If approved by the Board, the party requesting the subpoena shall be responsible for proper service thereof.

In case any person so served shall neglect or refuse to obey a subpoena, or refuse to testify in a hearing before the Board or Hearing Examiner, the Board may, at the request of any party, file a petition in the Circuit Court setting forth the facts of such knowing refusal or neglect. The petition shall be accompanied by a copy of the subpoena, the return of service thereon and the sworn statement of the person before whom the witness was to appear that the witness did not so appear. The petition shall apply for an order of the Court requiring such person to comply with the duly issued subpoena.

9. RECORDS EXAMINATION

At the direction of the Board or a hearing examiner, the parties may be directed to appear at a "records examination." Notice of same shall be provided by the Board or the hearing examiner. At the records examination, staff assigned by the Board shall, in an orderly and expeditious manner, search for and examine the State Board of Elections' computerized registration records for comparison to the names on the petition that have been objected to.

The Board or a hearing examiner may, in their discretion, order that a partial or sample records examination be conducted in order to test the validity of certain objections in the Objector's petition when it appears possible, viewing the face of the objections or upon other known facts, that the objections may not have been made as a result of a reasonable inquiry or investigation of the facts or were not made in good faith. In the alternative, the Board or hearing examiner may order, on its own motion or upon motion of the candidate, that the objector show cause as to why the objection should not be stricken as having not been well grounded in fact or in law. Failure to show such cause shall be grounds to strike the objection.

The Board's staff shall, based upon their examination of the relevant registration records, make and announce a finding as to whether certain objections in the Objector's petition are sustained or overruled. Such computerized voter registration records of the State Board of Elections and the staff findings as to whether the objections are sustained or overruled may be considered as evidence with respect to the objections described above.

Each party shall have the right to have designated and duly authorized representatives ("watchers"), including the party or the party's counsel, present during the records examination. No more than one watcher for each party may be assigned to any given computer terminal at which a records examination is being conducted. The failure of a watcher to timely appear at the examination shall not delay nor affect the validity of the examination and the records examination shall proceed.

Watchers are to participate as observers only. The Board's staff shall not be required to solicit the opinion of any watcher as to any matter nor consider such opinions if offered. Arguing with Board staff or other abusive conduct will not be tolerated. By order of the General Counsel or his designee, a watcher may be ordered removed from the records examination proceedings for the conduct specified above and any other conduct that disrupts the orderly conduct of the proceedings and if necessary, this provision will be enforced by appropriate law enforcement. In the event of such removal, the Board may continue with the records examination in the absence of the removed watcher. A party may replace a removed watcher with another watcher; however the records examination will not be delayed by the absence of a replacement watcher.

Staff shall note their findings as to each objection on copies of the objected to petition sheets, indicating a sustained objection with the letter "s" and an overruled objection with the letter "o". Following the records examination, the copies of the petition sheets containing the staff rulings shall be proofread for accuracy by Board staff, and the rulings thereon shall be used to create a line by line computer generated printout of the results of the records examination. The said printout shall then be sent via e-mail or facsimile to the parties or their counsel. (If both parties are present at the conclusion of the records examination and such printout is available, it may be

provided in person upon such conclusion.) The printout shall be so sent (or given) at the same date and time and such date and time shall serve as the commencement of the three (3) business day time period (aka, the Rule 9 Motion Period) described below. Copies (via electronic medium or hard copy) of the objected to petition sheets containing staff rulings will not be made available to the respective parties until noon on the next business day **at the earliest**.

The parties will be given an opportunity to present all objections to staff findings properly made at the records examination, to the Board or the hearing examiner at the evidentiary hearing on the merits of the objection scheduled by the Board or the hearing examiner. The party making the objection bears the burden of producing evidence proving that the staff finding was in error. Such evidence offered to refute the staff finding must be submitted to the Board or the hearing examiner no later than 5PM on the third business day following the date of the sending (or giving) of the printout described in the immediately preceding paragraph unless extended by the hearing examiner or Board. Evidence in the form of an affidavit must be sworn to, signed, and notarized before a notary public or other officer authorized to administer oaths in the State of Illinois. Verifications under Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) are not acceptable. If any extension is given to the candidate or objector to rehabilitate or strike any signature at any time including the final hearing by the Board then the opposing party's time period to provide other evidence to rebut that submission shall be equally extended, even if it means a continuation of the final hearing.

Section 1A-25 prohibits viewers from printing any records viewed at the records examination and there is no provision requiring the Board to print any such records for the benefit of any party. Therefore, at no time will the Board entertain any requests for printouts of records that were examined during the records examination conducted by the Board except as otherwise ordered by the Board or the hearing examiner. Lists of registered voters are available for purchase by political committees registered with the Board, pursuant to Article 4, 5 and 6 of the Election Code. Note: Such records do not contain the signatures of the voters. In addition, records of individual voters can be obtained through the office of the election authority in whose jurisdiction the voter is registered. Check with the appropriate election authority as to obtaining such records, and the content of same.

If at any time during the records examination it appears that (i) the number of valid signatures remaining on the petition is fewer than the number of valid signatures required by law or (ii) the number of valid signatures on the petition will exceed the number of valid signatures required by law even if all of the remaining objections to be decided were sustained, the Board or the hearing examiner may suspend the records examination and the results of the records examination shall be forwarded to the Board or the hearing examiner, as the case may be. If this is so ordered, the party adversely affected by the order will be afforded an opportunity to present evidence that there exists a sufficient amount of valid or invalid signatures as the case may be, to warrant resumption of the examination. Such evidence must be submitted within 48 hours of the order of suspension. The records examination may be resumed or terminated at the discretion of the Board or the hearing examiner.

(For a detailed description of specific objections and the policies applied to each, please refer to the attached Appendix A.)

10. EVIDENCE

Evidence will be heard by either the Board or the duly appointed hearing examiner as may be submitted, including, but not limited to, documentary evidence, depositions, affidavits, and oral testimony. Evidentiary depositions submitted by either party shall be entered into evidence. Discovery depositions shall be entered into evidence if agreed to by both parties, otherwise such depositions may only be used for purposes of impeachment. Such documentary evidence shall be presented at a hearing, however service of such documentary evidence may be made by facsimile or e-mail followed by a copy to be served by U.S. Mail if the Board or hearing examiner finds that to be the most expedient method of service.

Due to the fact that the Board must hear and pass upon objections within a limited time, extended examination and cross examination of witnesses will be subject to the discretion of the Board or its duly appointed hearing examiner, and the Board/hearing examiner will not be bound by the rules of evidence which prevail in the circuit courts of Illinois. The Chairman shall make all necessary evidentiary rulings, subject to appeal to the entire Board. Where a hearing examiner has been appointed, he or she will receive all evidence and make all evidentiary rulings, subject to review by the entire Board. The Board will not retry issues heard by a hearing examiner unless the hearing examiner has excluded evidence the Board believes should have been admitted. In such cases the Board will hear the excluded evidence and such other evidence as may be appropriate in response to the matter excluded. The Board will not hear evidence that could have been but was not presented to the hearing examiner, nor will the Board consider objections that could have been, but were not raised in the original objection.

11. ARGUMENT

All arguments and evidence must be confined to the points raised by the objector's petition and objections, if any, to the objector's petition. The Board reserves the right to limit oral arguments in any particular case and will ordinarily allow not more than ten minutes per side for argument.

With regard to the substance of the objections, generally the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence ("the burden of proof") that the objections are true and that the candidate's nomination papers are invalid.

12. ORDER

If the objections are sustained in whole or in part, the Board will issue an Order declaring the remedy up to and including invalidation of the nomination papers. The Board will state its findings in writing noting the objections which have been sustained. If the objection is overruled, the Board will issue the appropriate Order; stating its findings in writing.

13. GENERAL PROCEDURES

For the matters not covered herein, the Board will generally follow the provisions of the Code of Civil Procedure of Illinois and the rules of the Illinois Supreme Court regulating discovery and practice in trial courts, provided however that the Board will not be strictly bound by the Code or rules in all particulars.

14. SESSIONS

After the Board convenes the initial hearing, it will be in continuous session until all objections arising out of that filing period have been considered and disposed of, and, in the discretion of the Board, its session may be extended or recessed for a period to be determined by the Board.

15. TRANSCRIPT AND RECORD OF PROCEEDINGS

A transcript of the proceedings will be made by a certified court reporter. Copies may be purchased from the reporter and will not be furnished by the Board.

If a party aggrieved by the decision of the Board timely files and serves upon the Board a proper petition for judicial review pursuant to Section 10-10.1 of the Election Code, the Board shall, upon the written request of the petitioner or upon order of the Circuit Court, prepare and file with the Circuit Court the record of proceedings before the Board. The petitioner or the Court shall designate which portions of the record of proceedings are to be prepared and filed. The respondent or respondents in the judicial review proceedings may designate in writing additional portions of the record of proceedings to be prepared and filed if not included in the petitioner's designation of the record. The parties to a judicial review proceeding are encouraged to limit the record of proceedings to be filed with the Court to only those records material and relevant to the issues on judicial review so that the preparation and filing of unnecessary records is avoided.

ADOPTED THIS 19th day of June, 2012

_____)

CONSTITUTING THE

_____)

STATE BOARD OF

_____)

ELECTIONS

_____)

SITTING AS THE

_____)

DULY AUTHORIZED

_____)

STATE OFFICERS

_____)

ELECTORAL

_____)

BOARD

APPENDIX A.

Listed below are the most common grounds for objections to nominating petitions and the basis on which the Board will render decisions on objections unless evidence or argument presented at hearing persuade the Board that circumstances require a differing decision. References to the registration "card" in the context of the records examination conducted in the offices of the SBE refer to the electronic voter registration information contained in the Statewide voter registration database.

When the records examination is being conducted, any exceptions to the decision of the examiner must be made to the ruling at the time the ruling is made or the exception to the ruling is waived. Any party may, at the beginning of the records examination issue a general objection to any adverse decision of the records examiner obviating the need for individual objections. If, subsequent to the general objection, a party decides not to take exception to a particular ruling of the records examiner, the party must withdraw the objection as to that particular ruling.

If the Board determines that a pattern of fraud exists based on an inordinate number of invalid petition signers and/or petition circulators, such that the integrity of the entire petition or the petition sheets of individual circulators is sufficiently compromised, the Board may strike the entire petition (or individual petition sheets) on this basis. In order to be considered by the Board or the hearing examiner as a matter of right on the part of the objector, an allegation of a pattern of fraud must be initially pled by the objector and such pleading must be a part of the initial written objection filed by the objector. In the absence of such initial pleading by the objector, consideration of whether any pattern of fraud exists shall rest solely in the Board's discretion.

I. Objections to Individual Signers

A. Signer's Signature Not Genuine

The voter's original signature on his or her registration card (in either hard copy or electronic format) shall be examined. If, in the opinion of the records examiner the signature is not genuine, the objection shall be sustained. Collateral evidence of the validity of the signature is admissible, such as testimony of a person purporting to observe one person signing for another. There is no requirement that a signature be in cursive rather than printed form. Any objection solely on the ground that the signature is printed and not in cursive form or where the basis for the non-genuineness is the fact that the signature is printed, will be denied as failing to state grounds for an objection.

B. Signer Not Registered at Address Shown

The voter's registration information (in either hard copy or electronic format) shall be examined. If the address on the voter's card does not match the address opposite his or her name on the petition, the objection shall be sustained. **NOTE:** If the candidate can present evidence that the voter resided and was registered to vote at the address shown on the petition at any time during the petition

circulation period, the objection shall be overruled pending evidence from the objector that the voter did not reside at such address on the date he/she signed the petition.

C. Signer Resides Outside the State

Any objection to a petition signer whose address is determined by the records examiner to not in fact be located in Illinois, shall be sustained.

D. Signer's Address Missing or Incomplete

If there is no address listed other than a city or village, the objection shall be sustained unless, in the city, town or village, street addresses either do not exist or are not commonly used. Where the petition and the registration card both show the same rural route and box number, but no street address, the objection will be overruled. If the petition shows a street and house number and the registration card shows a rural route and box number the objection will be sustained. If however, the voter's place of residence has in fact not changed, but only the designation of it has changed, it is the burden of the candidate to show that only the designation of the residence has changed. If the address listed next to the voter's signature matches the registration record in pertinent part (eg. the petition lists "John Doe, 1020 South Spring, Springfield" and the registration record lists "John Doe, 1020 South Spring, P.O. Box 4187, Springfield), the objection will be overruled. Objections to ditto marks in the address column, where such marks indicate that a subsequent signer or signers live at the same address as the signer above, shall be overruled. Likewise, if the address line is blank, but the signers surname is the same as the person signing above, indicating that such signer resides at the same address, any objections to missing address shall be overruled. In either case, the decision to overrule the objection shall be subject to evidence by the objector showing such signer resides at a different address.

E. Signature is Not Legible

If the records examiner determines that a signature is not legible, the examiner shall check the address opposite the illegible signature. If none of the signatures of voters listed at that address match, the objection will be sustained. The basis of the objection however, must be that the petition signer is not registered at the address shown on the petition. If the basis of the objection is that the signature is not genuine, the objection will be overruled for the reason that it is impossible to determine genuineness of the signature without a comparison to the signature on the voter registration record. If the address is also illegible, and the candidate cannot sufficiently, in a reasonably short amount of time, identify the signatory so as to permit the records examiner to check the signature against a specific voter record, then the objection will be sustained. If the illegible signature is located at a single address at which ten or more voters are registered, the examiner shall not be required to examine every signature at that address to find a match, but may instead rule the objection sustained. In the event that the objection is sustained, the candidate at a later time (but in no event later than the expiration of the 3

business day time period set forth in Section 9 above) will be given an opportunity to present a copy of the petition signer's voter registration record for a signature comparison. If in the opinion of the records examiner or the Hearing Examiner the signature is genuine and the address on the voter registration record matches that contained on the petition, the objection will be overruled.

F. Signer Signed Petition More Than Once at Sheet/Line Indicated

If the signatures on the sheet and line numbers indicated match, the objection shall be sustained and all but the signature appearing on or closest to the first petition sheet shall be invalidated.

G. Signature Incorporates Initials/Name isn't Identical to Registration Record

If, for example, the registration record indicates "John E. Jones", 1020 South Spring, Spfld., and the petition lists "J. Jones" at 1020 South Spring, Spfld. the objection will be overruled if the signature on the card and the petition match. An objection that is based solely on the fact that a petition signature differs in form from the signature on the voter's registration card will be denied as failing to state grounds for an objection.

H. Voter Registration Record of Petition Signer Cannot be Located

The disposition of the objection depends on the grounds. If the objector is alleging that the person is not registered to vote at the address shown on the petition, the objection will be sustained. If the objection is based on the circumstances set forth in **A, D, E, or G** above, where the only evidence to substantiate the objection is contained on the voter registration card, the objection will be overruled.

I. Petition Signer's Voter Registration is on Inactive Status

The objection shall be overruled. The Objector may introduce parol evidence that the voter in question no longer resides at the address shown on the petition.

II. Objections to Circulators

A. Circulator did not Sign Petition Sheet

If the circulator's statement is unsigned, the objection shall be sustained, and all the signatures on the petition sheet shall be invalidated.

B. Ineligible Circulator

The fact that a circulator is not 18 years of age, or a United States Citizen or a resident at the place he or she states in the affidavit may be proved by any competent evidence. Ineligible circulators may not circulate petitions and a petition page so circulated is invalid. In addition, if it is shown that an ineligible circulator signed the circulator affidavit, this may constitute perjury and such evidence may be referred by the Board to the appropriate prosecutor's office. The

use of more than one ineligible circulator may constitute a pattern of fraud, providing a basis for disqualifying the entire petition.

C. Circulator's Signature Not Genuine

If the circulator is a registered voter in Illinois, his or her original signature on his or her registration card shall be examined. NOTE: It is not a requirement that a petition circulator be a registered voter. If, in the opinion of the person examining the signature, the signature is not genuine, the objection shall be sustained. The validity of Non-resident or non-registered circulator's signatures may be proved by any competent evidence. Collateral evidence of the validity of the signature of the circulator is admissible, such as testimony of a person purporting to observe one person signing the name of another circulator. There is no requirement that a signature be in cursive rather than printed form, and an objection solely on the ground that the signature is printed and not in cursive form, or where the basis for the non-genuineness is the fact that the signature is printed, will be denied as failing to state grounds for an objection

D. Circulator's Address is Incomplete

The circulator's address must be as complete as usage in his or her town, county or state requires. When the circulator's address does not indicate a street name or rural route number, or is missing a city, village, town or county (where the residence is in an unincorporated area), the objection shall be sustained subject to rehabilitation by the candidate upon the production of a valid address.

E. Use of Registration Card as Evidence

If the circulator is a registered voter in any state, a certified copy of his or her registration document is competent evidence of age, citizenry and residence.

F. Purported Circulator Did Not Circulate Sheet

Upon proof by the objector that the individual who signed as circulator did not circulate the petition sheet or personally witness the signing of the signatures on the petition sheet, the entire sheet shall be invalidated. See also II (C) above.

G. Sheet Not Notarized

If the petition sheet is not notarized, the entire sheet will be invalidated. Simply missing a notary seal does not invalidate the sheet, unless the objector establishes that the sheet was not notarized by a qualified notary public.

H. Purported Notary Did Not Notarize Sheet

If the petition sheet is not in fact notarized by the notary who purports to notarize it, the entire sheet will be invalidated. See also II(C) above.

III Miscellaneous Objections

A. Signatures Exceed the Statutory Maximum

If a petition is filed that contains signatures in excess of the statutory maximum, an objection solely on that basis will not result in the petition being invalidated. However, for purposes of determining the total number of valid signatures, the Board will not consider any signatures (or objections thereto) in excess of the statutory maximum, the count of which will commence with page 1.

APPENDIX B.

Schedule of Brief and Motion Filing

Candidate's Motion to Strike and/or Dismiss or other similar motion (MTSD)

Objector's Motion for Summary Judgment or other similar motion (MSJ)

Must be filed no later than 5 pm on the second business day following the date of the Initial Meeting of the Board, unless extended by the Board or hearing examiner.

Objector's Response to Candidate's MTSD

Candidate's Response to Objector's MSJ

Must be filed no later than 5 pm on the second business day following the due date of the Candidate's MTSD or Objector's MSJ unless extended by the Board or hearing examiner.

Candidate's Reply to Objector's Response to Candidate's MTSD

Objector's Reply to Candidate's Response to Objector's MSJ

Must be filed no later than 5 pm on the second business day following the due date of the Objector's Response to the Candidate's MTSD or the Candidate's Response to the Objector's MSJ unless extended by the Board or hearing examiner.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading. Briefs on any issue or issues shall be filed as directed by the Board or the hearing examiner.

**STATE BOARD OF ELECTIONS
STATE OF ILLINOIS**

2329 S. MacArthur Blvd
Springfield, Illinois 62704-4503
217/782-4141 TTY: 217/782-1518
Fax: 217/782-5959

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Fax: 312/814-6485



EXECUTIVE DIRECTOR
Rupert T. Borgsmiller

BOARD MEMBERS
William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers
Betty J. Coffrin
Ernest L. Gowen
Judith C. Rice
Bryan A. Schneider
Charles W. Scholz

MEMORANDUM

TO: Chairman McGuffage, Vice Chairman Smart, Members of the Board
Executive Director Rupert T. Borgsmiller

From: Steve Sandvoss, General Counsel

Re: Appointment of Hearing Officers

Date: July 5, 2012

I have selected the following persons to serve as hearing officers for the 22 objections filed with the State Board of Elections following the filing period for candidates appointed to fill vacancies in nomination to appear on the ballot at the November 2, 2012 General Election and propose the following cases be assigned to them for hearing.

Barbara Goodman

Direso v. Oberline, 12SOEBGE101
James v. Gray, 12SOEBGE109
McSweeney v. Beaubien, 12SOEBGE507

Philip Krasny

Alexander v. Bradshaw, 12SOEBGE108
Abbott & Cabay v. Marks, 12SOEBGE505
Storm & Eck v. Hartman, 12SOEBGE506

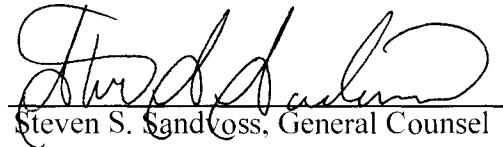
Jim Tenuto

Worthy v. Pierce, 12SOEBGE102
Chiles v. Dearing, 12SOEBGE103
Rakers v. McKerrow, 12SOEBGE104
Wiss v. Norris, 12SOEBGE105
Tozer v. Mazo, 12SOEBGE106
Cushman v. Stufflebeam, 12SOEBGE107
Carruthers v. Percy, 12SOEBGE110
DeVivo v. Tucek, 12SOEBGE504

Sloan v. Kossack, 12SOEBGE508
Hartweg v. Kay (Karkusiewicz), 12SOEBGE509
Uzzell v. Evans, 12SOEBGE510
Douglas & Posateri v. Reyes, 12SOEBGE511
Sherman v. Clymer & Goode, 12SOEBGE512
Sherman v. Hawkins, 12SOEBGE513
Sherman v. Anderson & Boyd, 12SOEBGE514
Sherman v. Alexander & Mendoza, 12SOEBGE515

I would request from the Board authorization to appoint the above persons to serve as hearing officers and for the above cases to be assigned to them for hearing.

Respectfully Submitted,



Steven S. Sandvoss, General Counsel

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

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EXECUTIVE DIRECTOR
Rupert T. Borgsmiller

BOARD MEMBERS
William M. McGuffage, Chairman
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Bryan A. Schneider
Charles W. Scholz

MEMORANDUM

TO: Chairman William M. McGuffage, Vice Chairman Jesse R. Smart
Members of the Board
Executive Director Rupert T. Borgsmiller

From: Steve Sandvoss, General Counsel

Re: Rule 8 Subpoena Review Recommendation

Date: July 5, 2012

Subpoenas have been requested in the following cases:

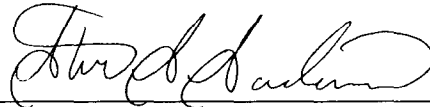
Imhoff v. Collins, 12 SOEB GE 102
Stanley v. Roman, 12 SOEB GE 503
Morris v. Montalvo, 12 SOEB GE 500

In Collins, the Hearing Officer recommends granting the request as to certain registered voters whose signatures were challenged and where such challenge was sustained at the records exam, as their testimony is relevant to the issue of validity of such voters' signatures. The hearing officer recommends denying the request as to the Objector (whose testimony was sought to determine his motive, interest, reasoning, etc.) due to lack of relevancy and denying the request as to voter registration records maintained by the Cook County Clerk's office, as such records were available to the Candidate without the need for a subpoena and issuing same would unreasonably delay the resolution of this objection and circumvent the Rule 9 process. I concur with this recommendation.

Similarly, in Roman the Candidate seeks the testimony of the Objector through the issuance of a subpoena, as well as voter registration records maintained by the Office of the Cook County Clerk. The Hearing Officer initially recommended denial of such requests, based on the same rationale as the Hearing Officer in the Collins case above. However, subsequent to the recommendation, the Candidate withdrew the Rule 9 Motion containing the subpoena request. Therefore, the Board need not consider the same.

In Montalvo, the Objector requests subpoenas for certain notaries public and certain circulators to provide testimony related to the circulation and notarization of petition sheets, as well as the addresses of certain circulators. The Hearing Officer recommends granting the requests based on their relevance, and the witnesses' personal knowledge of the facts alleged in the objector's petition. The Hearing Officer recommends denying the request as to one individual circulator, as the petitions she allegedly circulated were not contained in the paragraph of the objector's petition setting forth those petition sheets which were alleged to have been improperly circulated. I concur with this recommendation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steven S. Sandvoss", written in black ink.

Steven S. Sandvoss, General Counsel

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Joseph Morris)	
)	
Objector)	
)	
-v-)	12 SOEB GE 500
)	
Edgar Montalvo)	
)	
Candidate)	

RECOMMENDATION REGARDING SUBPOENA REQUEST

The following recommendations are hereby made with respect to the Objector's Rule 8 Motion for Issuance of Subpoenas.

The Objector has requested the issuance of subpoenas for certain notaries. Said request relates directly to paragraph 14 of the objector's petition which alleges that certain circulators did not appear before notaries.

The Objector has further requested the issuance of subpoenas for certain circulators. Said request relates directly to paragraph 16 of the objector's petition which alleges that certain circulators did not obtain all of the signatures contained on what purports to be the respective circulator's sheets.

The Objector has further requested the issuance of subpoenas for circulators wherein their residence addresses are in question. Said request relates directly to paragraph 20 of the objector's petition in which alleges that the circulators do not reside at the addresses set forth in the circulator's affidavit.

Candidate has objected to the issuance of these subpoenas on the basis that the objector's petition contains only bald assertions and that it offers no factual support for the claims made therein and that the subpoena requests "amount to nothing more than a fishing expedition." (page 1, first paragraph of candidate's objection to objector's request for the issuance of subpoenas dated July 5, 2012).

Candidate's objection is not well taken. The objector's petition contains sufficient specificity to put the candidate on notice as to the alleged irregularities of the nominating papers and the subpoena requests relate directly to those allegations. As the objector points out in his request, there is good cause shown for the issuance of the subpoenas as, where here, the information expected to be elicited from the subpoenaed individual is relevant to the issues raised, the subpoenaed individual has personal knowledge of the relevant facts and the information expected to be elicited is not cumulative. See, e.g. *Pickering v Owens-Corning Fiberglass Corp.* 265 Ill. App. 3d 806 (5th Dist. 1994). The objector's request meets all of these criteria. Therefore, it is my recommendation that subpoenas be issued for the individuals specified in paragraphs 1,2 and 3 of Objector's Rule 8 Motion for Issuance of Subpoenas with the exception of Kathleen Lindyhunt.

Candidate raises an additional issue with respect to the issuance of a subpoena for Kathleen Lindyhunt. Although objector has alleged that Kathleen Lindyhunt is one of the circulator's whose residence address is in question, Candidate has pointed out that she is not one of the circulator's who circulated the sheets specifically mentioned in objector's paragraph 20. If that is the case,¹ then the request for issuance of subpoena for Kathleen Lindyhunt should be denied.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman
Hearing Officer
7/5/12

¹ The full set of petition sheets was not available to this hearing officer at the time of this recommendation.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR**

Joseph Morris,)	
)	
Petitioner-Objector,)	
)	
vs.)	No. 12 SOEBGE 500
)	
Edgar Montalvo,)	
)	
Respondent-Candidate.)	

RULE 8 MOTION FOR ISSUANCE OF SUBPOENAS

Petitioner-Objector, JOSEPH MORRIS ("Objector"), by and through his attorneys, and pursuant to Rule 8 of the Rules of Procedure, hereby requests the issuance of subpoenas from the Illinois State Board of Elections ("Board") for the individuals identified herein. In support of this Motion, the Objector states as follows:

I. STANDARD FOR ISSUANCE OF SUBPOENAS.

Section 10-10 of the Illinois Election Code ("Section 10-10") states, in pertinent part: "[t]he electoral board shall have the power *** to subpoena and examine witnesses and at the request of either party the chairman may issue subpoenas requiring the attendance of witnesses *** in the same manner as witnesses are subpoenaed in the Circuit Court." 10 ILCS 5/10-10. The court's power to order a party to appear should only be exercised for good cause and in such a manner that a party may not be subjected to harassment, oppression, or hardship. *Pickering v. Owens-Corning Fiberglas Corp.*, 265 Ill.App.3d 806,816 (5th Dist. 1994). Good cause is shown where: (i) the information expected to be elicited from the subpoenaed individual is relevant to the issues raised, (ii) the subpoenaed individual has personal knowledge of the relevant facts, (iii) the

information expected to be elicited is not cumulative. See Id. at 816-18. A subpoena should be quashed where there is a broad demand that is of questionable relevance to the issues raised and that is intended as a catch-all request. *People v. West*, 102 Ill.App.3d 50 (2nd Dist. 1981).

II. GOOD CAUSE EXISTS TO ISSUE SUBPOENAS FOR THE INDIVIDUALS IDENTIFIED HEREIN.

Pursuant to Rule 8 and Section 10-10, Objector hereby requests the issuance of subpoenas for the following individuals to appear at an evidentiary deposition at the offices of Objector's attorney at such date and time as is deemed appropriate by this Board, or, in the alternative, to appear at the Board offices at such date and time as the hearing officer schedules for the hearing on the Objector's Verified Objector's Petition:

1. The notaries who notarized those petition sheets identified in Paragraph 14 of the Verified Objectors Petition, specifically: MARK RITTER, GLENN BATES, GAYLE SMITH, CRISELDA GOSSETT, SUSAN DAVIS, PIERRE GREGOIRE, ANNE KRUK, and LOUISE NEWBURY. Paragraph 14 asserts that the circulators failed to appear before the Notary and the petitions are therefore invalid. See Cunningham v. Schaefflein, 2012 WL 1592200 at *11-12 (Ill.App. 1 Dist. May 4, 2012). The Objector intends to elicit testimony from the notaries identified herein as to whether the particular circulator appeared before them when they notarized the applicable petition sheet. The notaries identified herein will inarguably have personal knowledge of these facts. Further, each notary identified will each testify to the particular petition sheets they notarized and, therefore, their testimony will not be cumulative.

2. The circulators who circulated those petition sheets identified in Paragraph 16 of the Verified Objectors Petition, specifically: EDGAR MONTALVO, STEVE ORLANDO, and

MARILYN KNATER. Paragraph 16 asserts that the circulators affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of every voters' signature to the petition sheets they circulated and those sheets are therefore invalid. The Objector intends to elicit testimony from the circulators identified herein as to whether they actually obtain, solicit or witness the affixing of every voters' signature to the petition sheets they circulated. The circulators identified herein will inarguably have personal knowledge of these facts. Further, each circulator identified will each testify to the particular petition sheets they circulated and, therefore, their testimony will not be cumulative.


3. The circulators who circulated those petition sheets identified in Paragraph 20 of the Verified Objectors Petition, specifically: DWIGHT DAVIES, KATHLEEN LINDYHUNT, ABEID MITCHELL, and JOSHUA CLEMONS. Paragraph 20 asserts that the circulator's affidavits contain purported residence addresses of the circulators which are not the addresses where the circulators reside. The Objector intends to elicit testimony from the circulators identified herein as to where they reside and establish that the circulators affidavit is false and in violation of the Illinois Election Code. The circulators identified herein will inarguably have personal knowledge of these facts. Further, each circulator identified will each testify to their particular residence and, therefore, their testimony will not be cumulative.

Pursuant to Rule 8, a copy of the proposed subpoenas are attached hereto as Exhibits A1 through A15.

IV. CONCLUSION

Wherefore, for all the foregoing reasons, the Objector respectfully requests, pursuant to Rule 8 and Section 10-10, that the Illinois State Board of Elections issue subpoenas for the individuals identified above to appear at such date and time as the hearing officer schedules for the hearing on Objector's Verified Objector's Petition.

Respectfully submitted,



Attorney for Objector

Michael J. Kasper
222 N. LaSalle
Chicago, IL 60601

Matthew M. Welch
3318 W. 95th Street
Evergreen Park, IL 60805

James P. Nally
8 S. Michigan
Chicago, IL 60603

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR**

Joseph Morris,)	
)	
Petitioner-Objector,)	
)	
vs.)	No. 12 SOEBGE 500
)	
Edgar Montalvo,)	
)	
Respondent-Candidate.)	

NOTICE TO PRODUCE


TO: John Fogarty, Jr.
Law Offices of John Fogarty, Jr.
4043 N. Ravenswood, Suite 226
Chicago, Illinois 60613

Pursuant to the administrative rules of the Illinois State Board of Elections, and due process of law, the Candidate is requested and directed to produce the following:

1. The Candidate, Edgar Montalvo, to appear at the Objector attorney's office for a evidentiary deposition regarding matters set forth in Paragraph 16 of the Objector's Petitions at a date and time to be mutually agreed but in no event later than July 13, 2012.

Respectfully submitted,

Dated: July 2, 2012



Attorney for Objector

Michael J. Kasper
222 N. LaSalle
Chicago, IL 60601

Matthew M. Welch
3318 W. 95th Street
Evergreen Park, IL 60805

James P. Nally
8 S. Michigan
Chicago, IL 60603

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4043 North Ravenswood, Suite #226
Chicago, IL 60613
(773) 549-2647 (phone)
(773) 681-7147 (fax)
www.fogartylawoffice.com

July 5, 2012

Via E-mail

Ms. Barb Goodman
Illinois State Board of Elections
100 West Randolph, Suite 14-100
Chicago, Illinois 60601

Re: *Morris v. Montalvo*, 12 SOEB GE 500

Dear Ms. Goodman:

I write in opposition to the Objector's subpoena request. The Objectors seek to compel the testimony of no less than 15 individuals on a variety of theories that have one thing in common – the Objector has offered not one scintilla of fact to support any of them. As such, these subpoena requests amount to nothing more than a fishing expedition, and should be denied.

First, the Objectors ask to compel the appearance of eight notaries on the theory that unnamed circulators did not appear personally before these notaries to have their petitions notarized. However, the Objector has utterly failed to offer any factual basis whatsoever for this claim – either in his Objector's Petition or in his subpoena request. Paragraph 14 of the Objector's Petition simply makes the naked allegation that certain unnamed circulators did not personally appear before a notary to have their petitions notarized. The Objector's subpoena request is equally bereft of factual support. No affidavit from any person with knowledge is offered to substantiate the Objector's claim that any circulator failed to appear before a notary. Surely, an Objector may not be permitted to simply allege an "ultimate fact," without any specific factual basis that the Objector has chosen to share, and to then use the subpoena power of this body to try to create his case.

Similarly, the Objector likewise seeks to compel the testimony of three individuals – Edgar Montalvo, Steve Orlando, and Marilyn Knater – on the theory that these individuals did not personally obtain all of the signatures on the petition sheets they each circulated. Again, the Objector has offered not a shred of factual support for this claim. Rather, the Objector has made only this bald, catch-all allegation in his Objector's Petition.

Finally, the Objector asks for the testimony of four circulators (Dwight Davies, Kathleen Lindyhunt, Abeid Mitchell, and Joshua Clemons) who he claims do not reside at the address they list on their circulator's affidavit. Again, the Objector provides nothing more than his bald

allegation, either in his Objector's Petition, or with his subpoena request, to provide a basis for this claim. For this reason, this request should be denied. Further, while the Objector includes Kathleen Lindyhunt in this request, Ms. Lindyhunt was not the circulator of any of the petition sheets listed in Paragraph 20 of the Objector's Petition. For this additional reason, the subpoena sought for Kathleen Lindyhunt must be denied.

Thank you for your consideration.

Sincerely,

/s/ John G. Fogarty, Jr. /s/

John G. Fogarty, Jr.

cc: Matthew Welch

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR**

Joseph Morris,)	
)	
Petitioner-Objector,)	
)	
vs.)	No. 12 SOEBGE 500
)	
Edgar Montalvo,)	
)	
Respondent-Candidate.)	

REPLY IN SUPPORT OF OBJECTOR'S RULE 8 MOTION

NOW COMES Petitioner-Objector, JOSEPH MORRIS ("Objector"), by and through his attorneys, and in support of his Rule 8 Motion for Issuance of Subpoenas submits this Reply to Candidate's Response to the Rule 8 Motion:

I. NOTHING IN SECTION 10-10 OF THE CODE, THE BOARD'S RULES OF PROCEDURE, NOR ILLINOIS CASE LAW REQUIRES SUBMISSIONS OF FACT TO JSUTIFY THE ISSUANCE OF SUBPOENAS, RATHER, THE ELEMENTS UNDER *PICKERING* CONTROL.

The Candidate's Response in opposition to the Objector's Rule 8 Motion is wholly unsupported by citation to the Illinois Election Code, this Board's Rules of Procedure and/or Illinois case law. As stated in Objector's Rule 8 Motion, the Electoral Board has the power to issue subpoenas "in the same manner as witnesses are subpoenaed in the Circuit Court." 10 ILCS 5/10-10. Accordingly, the subpoena power should be exercised when "good cause" is shown. *Pickering v. Owens-Corning Fiberglas Corp.*, 265 Ill.App.3d 806, 816 (5th Dist. 1994). Good cause is shown where: (i) the information expected to be elicited from the subpoenaed individual is relevant to the issues raised, (ii) the subpoenaed individual has personal knowledge of the relevant

facts, (iii) the information expected to be elicited is not cumulative. See *Id.* at 816-18. Under Illinois law, the foregoing three elements are the only elements required to be shown for subpoenas to issue.

Aside from procedural hurdles, the Illinois State Board of Elections, through adoption of their Rules and Procedures, has not added any additional required “elements” for the issuance of subpoenas. (See Rule 8 of the Rules of Procedure). The Candidate has not argued that the Objector failed to comply with the procedures set forth in Rule 8 nor has the Candidate argued that the Objector failed to comply with the elements set forth in *Pickering*, which governs the issuance of subpoenas in the Circuit Court and, thereby, subpoenas under Section 10-10 of the Election Code. Contrary to the Candidate’s assertions in his Response, neither Section 10-10, this Board’s Rules of Procedure, nor Illinois case law require a showing of fact for the issuance of subpoenas. Again, the three elements in *Pickering* are all that is required to justify the issuance of subpoenas.

Candidate further argues that the Objector’s Petition lacks “factual support” to support the “ultimate fact” allegation. This is essentially a 2-615 Motion to Dismiss argument. To the extent Candidate takes issue with the form of the allegations in the Objector’s Petition and the alleged lack of allegations of fact to support the “ultimate fact”, Candidate has waived such arguments as they were not included in his Motion to Strike. If the Objector’s Petition was legally insufficient for failure to allege necessary facts, it should have been handled through a Motion to Strike. Such matters having now been waived it is not a basis to deny the issuance of subpoenas.

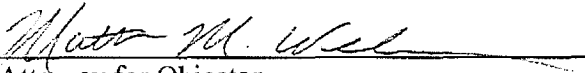
II. THE CANDIDATE'S ARGUMENT ASKS THIS COURT TO VIOLATE THE DICTATES OF DUE PROCESS.

As stated above, the only requirements for the issuance of subpoena are those under Section 10-10, this Board's Rules of Procedure, and case law interpreting the foregoing. If this Board were to require some evidentiary showing for the issuance of a subpoena, beyond what is required in the Circuit Court, *i.e.* the *Pickering* elements, this Board was required to clearly delineate such requirements when it issued its Rules of Procedure. See *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1971). However, the Board's Rules of Procedure do not require any showing of fact as is claimed by the Candidate. Nor does Section 10-10 require a "showing of fact," whatever that may mean, for issuance of subpoenas. Nothing in Section 10-10 nor the Rules of Procedure suggest that such a showing is necessary. Accordingly, this Board cannot impose such a requirement in the absence of pre-existing regulations forewarning parties because requiring such a "showing" would violate due process. See *Briscoe*, 435 F.2d at 1055.

III. CONCLUSION

Wherefore, for all the foregoing reasons, the Objector respectfully requests, pursuant to Rule 8 and Section 10-10, that the Illinois State Board of Elections issue subpoenas for the individuals identified in the Objector's Rule 8 Motion.

Respectfully submitted,


Attorney for Objector

Michael J. Kasper
222 N. LaSalle
Chicago, IL 60601

Matthew M. Welch
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Evergreen Park, IL 60805

James P. Nally
8 S. Michigan
Chicago, IL 60603

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

Frank Imhoff

Objector

vs.

Cary Collins

Candidate

Board File#: 12 SOEB GP 502

RECOMMENDATION

This cause coming to be heard on the Candidate's Request for the issuance of subpoenas, the Hearing Officer makes the following recommendations to the Board:

Whether discovery should be allowed is dependent upon the relevance and materiality of the information to be discovered. Similarly, the issuance of a pretrial subpoena requires, among other things, that the documents sought be evidentiary and relevant. (See *People v. Shukovsky* (1988), 128 Ill.2d 210, 225, citing *United States v. Nixon* (1974), 418 U.S. 683, 699-700, 41 L. Ed. 2d 1039, 1059, 94 S. Ct. 3090, 3103; *People ex rel. Fisher v. Carey* (1979), 77 Ill.2d 259, 269.)

The four requirements for issuance of a subpoena, set out in *United States v. Nixon* (1974), 418 U.S. 683, 699-700, 41 L.Ed.2d 1039, 1059, 94 S.Ct. 3090, 3103, include

"(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'"

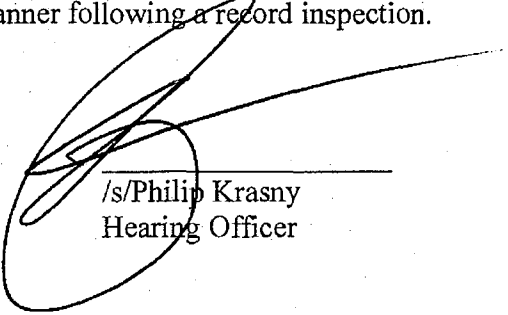
Based upon the above,

1) It is recommended that the Board issue requested subpoenas for voters, whose signatures were challenged and sustained at the record inspection, to appear at the hearing scheduled for July 12, 2012 at 2:00 at the SBOE office in Chicago.

2). It is not recommended that the Board issue a subpoena for the appearance of Objector, Fred Imhoff, since the basis for the Candidate's request (to have him testify to his interest, bias, reasoning, cause, and/or motive in filing the objection petition) is irrelevant;

3) Likewise, it is not recommended that the Board issue a subpoena to county clerks for specified records, since the records requested were available without a subpoena and issuing the subpoena would circumvent the intent of requiring that Rule 9 materials be filed in a timely manner following a record inspection.

July 5, 2012



/s/Philip Krasny
Hearing Officer

BEFORE THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED
ELECTORAL BOARD TO HEAR AND PASS UPON OBJECTIONS
TO CERTIFICATES OF NOMINATION AND NOMINATION PAPERS

Frank F. Imhoff

Petitioner-Objector,

v.

Cary Collins,

Respondent-Candidate.

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12 SOEBGE 502

REQUEST FOR SUBPOENA ISSUANCE

Candidate, Cary Collins, by and through his attorneys, Svenson Law Offices and Collins & Radja, requests for the issuance of subpoenas to the following individuals and/or entities:

1. Objector Frank Imhoff's live testimony:
Purpose: to elicit testimony and evidence as to the interest, basis, reasoning, intent, cause, motive, analysis and other relevant factors respecting the pending Objector's Petition, all for the purpose of enabling the Hearing Officer and the Board to hear and pass upon the Objector's Petition.
2. Registered voters live testimony:
 - A. Dante de Guzman 811 Flowers Avenue, Streamwood, Cook County, Illinois.
 - B. Maureen Macklin 500 Colgate Court, Hoffman Estates, Cook County, Illinois.
 - C. Linda Jesse 515 Edgemont Lane, Hoffman Estates, Cook County, Illinois
 - D. Johnnell Williams 27 Carey Lane, Streamwood, Cook County, Illinois.
 - E. Brian Head 885 Indian Wells Circle, Elgin, Kane County, Illinois.
 - F. Allan Majca 1336 Laurel Oaks Drive, Streamwood, Cook County, Illinois.
 - G. Tobitha Gray 401 East Chicago Street, Elgin, Kane County, Illinois.
 - H. Mark Stortenbecker 801 North Shady Oaks Drive, Elgin, Cook County, Illinois.
 - I. Christine Cheong 2065 Bonita Lane, Hoffman Estates, Cook County, Illinois
 - J. S.H. 1150 Shawford Way, Elgin, Cook County, Illinois
 - K. N.P. 1168 Shawford Way, Elgin, Cook County, Illinois
 - L. Saqin R. Anwell 1152 Ironwood Drive, Elgin, Cook County, Illinois
 - M. Esther Luna 831 North Dovington Court, Hoffman Estates, Cook County, Illinois
 - N. Erica Martin 8 Sagebrush Court, Streamwood, Cook County, Illinois
 - O. Michael Mangino 1480 Rosedale Lane, Hoffman Estates, Cook County, Illinois
 - P. Angela Coleman 1494 Cornell, Hoffman Estates, Cook County, Illinois
 - Q. Mohammed A. Dawood 1938 Georgetown Lane, Hoffman Estates, Cook County, Illinois
 - R. Shankar Haryani, 1967 Haddam Place, Hoffman Estates, Cook County, Illinois
 - S. Anne M. Suchan 1958 Swindon Place, Hoffman Estates, Cook County, Illinois

T. Ralph J. Steffen 1830 Eton Drive, Hoffman Estates, Cook County, Illinois
U. Elaine Wuerffel 2405 Fabish Court, Schaumburg, Cook County, Illinois
V. Doris Scholle 328 Kingsbury Drive, Schaumburg, Cook County, Illinois
W. Elizabeth O'Brien 1285 Nottingham Lane, Hoffman Estates, Cook County, Illinois

Purpose: to elicit testimony and evidence as to the voter registration and/or other matters related to those individuals that signed Candidate's petition.

3. Cook County Clerk David Orr's voter records
Purpose: to secure the voter registration records and/or signature clips of those individuals who signed Candidate's petitions, whose signatures were "thrown out" at the Records Review.
4. Kane County Clerk John Cunningham's voter records
Purpose: to secure the voter registration records and/or signature clips of those individuals who signed Candidate's petitions, whose signatures were "thrown out" at the Records Review.

Christine Svenson
Svenson Law Offices
505 N. LaSalle Street
Suite 350
Chicago IL 60654
T: 313.437.8629
christine@svensonlawoffices.com

BEFORE THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED
ELECTORAL BOARD TO HEAR AND PASS UPON OBJECTIONS
TO CERTIFICATES OF NOMINATION AND NOMINATION PAPERS

Frank F. Imhoff)	
)	
Petitioner-Objector.)	
)	
v.)	12 SOEBGE 502
)	
Cary Collins.)	
)	
Respondent-Candidate.)	

SUBPOENA DUCES TECUM FOR TESTIMONY AND RECORDS

To: Frank Imhoff
739 Prospect
Elgin IL 60120

You are hereby commanded to give your testimony before the Honorable Philip Krasny at the Illinois State Board of Elections, 100 W. Randolph, Suite 14-100, Chicago IL on Tuesday, July 10, 2012, at 10:00 am, or at such other date and time as authorized by the Board.

You are commanded to produce all books, records and documents relied upon by Objector in the filing of the pending Objector's Petition.

**YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO
PUNISHMENT FOR CONTEMPT OF THIS COURT**

Christine Svenson
Svenson Law Offices
505 N. LaSalle Street
Suite 350
Chicago IL 60654
T: 312.437.8629

_____ I served this Subpoena by mailing a copy, as required by IL Sup Ct Rules 11, 12 to
Frank Imhoff, by certified mail, returned receipt requested (Receipt no. _____) on
_____. I paid the witness _____ for witness and mileage fees.

_____ I served this subpoena by handing a copy to _____
I paid the witness _____ for witness and mileage fees.

Signature of server

Date

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Frank F. Imhoff.

Petitioner-Objector.

v.

Cary Collins,

Respondent-Candidate.

No. 12 SOEBGE 502

OBJECTION TO ISSUANCE OF SUBPOENA

NOW COMES objector, by and through his attorney, Michael Kasper, and objects to the following Request for Subpoena:

Frank Imhoff. The objector objects to the issuance of this subpoena on the basis of relevance and on the basis that it is designed merely to inconvenience and harass the objector for exercising his rights pursuant to the Illinois Election Code in particular. In addition, any evidence the candidate may wish to solicit from the objector could likely be entered via stipulation, which the candidate has neither sought nor requested.

WHEREFORE, the Objector respectfully requests that the request for subpoena be denied.

[Signature]

Michael J. Kasper
Attorney for Objector

Michael J. Kasper
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601
312.704.3292
312.368.4944 (facsimile)
Attorney No. 33837

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Frank F. Imhoff,

Petitioner-Objector,

v.

Cary Collins,

Respondent-Candidate.

No. 12 SOEBGE 502

NOTICE OF FILING

TO: Vincent J. Geisler
Vincent.Geisler@gmail.com

State Board of Elections
 217.782.5959

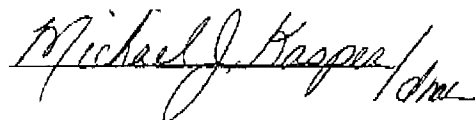
Philip Krasny, Hearing Officer
philipkrasny@yahoo.com

Christine Svenson
christine@svensonlawoffices.com

Please take notice that on Thursday, July 5, 2012, I filed with the State Board of Elections the attached Objection to Issuance of Subpoena, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the attached Objection to Issuance of Subpoena was served upon the parties referenced above by facsimile or email on Thursday, July 5, 2012.



Michael J. Kasper
 222 N. LaSalle, Suite 300
 Chicago, IL 60601
 312.704.3292
 312.368.4944 (facsimile)
 Attorney No. 33837

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Deborah Stanley)	
)	
Objector)	
)	
-v-)	12 SOEB GE 503
)	
Xavier Roman)	
)	
Candidate)	

RECOMMENDATION REGARDING SUBPOENA REQUEST

The following recommendations are hereby made with respect to the request for the issuance of subpoenas contained in Candidate's Request for Rule 9 Evidentiary Hearing:

Good cause for the issuance of subpoenas is shown where the information expected to be elicited from the subpoenaed individual is relevant to the issues raised, the subpoenaed individual has personal knowledge of the relevant facts and the information expected to be elicited is not cumulative. See, e.g. *Pickering v Owens-Corning Fiberglass Corp.* 265 Ill. App. 3d 806 (5th Dist. 1994).

The Candidate has requested that the Objector be produced or that a subpoena be issued for the Objector. Said request indicates that the purpose is to have the Objector testify as to her "interest, basis, reasoning, intent, cause, motive, analysis and other relevant factors respecting the pending Objector's Petition." (Candidate's Rule 9 Motion, page 1) Objector has objected to the request for the issuance of a subpoena for the Objector inasmuch as the specified purposes are not relevant and the request, according to the Objector, is made for the purpose of harassment. It is my recommendation that the Candidate's request be **denied** in that none of the reasons the Candidate provided for the Objector's testimony are relevant.

The Candidate has also requested that the County Clerk's records be subpoenaed for use in his Rule 9 evidentiary hearing. It is my recommendation that this request be **denied** as well. All of the requested records were available without a subpoena at the time of the records

examination and all evidence for the Rule 9 hearing should be produced at the time of the hearing (scheduled for July 6, 2012). To subpoena documents that were available during the records examination would only serve to unduly extend and prolong the Rule 9 hearing.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman

Hearing Officer

7/5/12

**BOARD OF ELECTION COMMISSIONERS OF THE STATE OF ILLINOIS AS A
DULY CONSTITUTED ELECTORAL BOARD**

DEBORAH STANLEY

Objector.

Vs.

No. 12-SOEB GE 503

XAVIER ROMAN

Candidate

Hearing Officer Barbara Goodman

REQUEST FOR A RULE 9 EVIDENTIARY HEARING

Candidate, Xavier Roman, requests an evidentiary hearing pursuant to Rule 9 of the Board of Election Commissioners of the State of Illinois. As a general matter, we renew our objection to every candidate's objection that was previously sustained at the Records Examination and every finding contrary to candidate. Candidate requests an evidentiary hearing related to the matters set forth on Attachment A to this Request.

Moreover, Candidate requests the testimony of the following individuals:

1. Objector Deborah Stanley's live testimony:
Purpose: to elicit testimony and evidence as to the interest, basis, reasoning, intent, cause, motive, analysis and other relevant factors respecting the pending Objector's Petition, all for the purpose of enabling the Hearing Officer and the Board to hear and pass upon the Objector's Petition.
2. Cook County Clerk David Orr's voter records (see attached subpoena)
Purpose: to secure the voter registration records and/or signature clips of those individuals who signed Candidate's petitions, whose signatures were "thrown out" at the Records Review.

Finally, as this Honorable Board is aware, the validity of the state's Congressional and Legislative District maps is the subject of federal litigation. Such litigation could result in changes to either or both District map boundaries, which may cause a voter's address to be located in a District other than the one currently deemed to be valid at the time of the Records Review. This litigation consists of the following cases:

League of Women Voters of Illinois v. Quinn, et al, No. 1:11-cv-05569 (N.D. Ill.)
Radogno, et al., v. Illinois State Board of Elections, et al, No. 1:11-cv-04884 (N.D. Ill.)

In light of this pending litigation, Candidate continues to object and reserves the right to

challenge objections at a later date that were sustained at the time of the Records Review based upon a signer residing "out of district."

Respectfully submitted,



Christine Svenson

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christine@svensonlawoffices.com

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

RECEIVED

JUL 5 2012

Deborah Stanley,

Petitioner-Objector,

v.

Xavier Roman,


Respondent-Candidate.

No. 12 SOEBG **State Board of Elections****OBJECTION TO ISSUANCE OF SUBPOENA**

NOW COMES objector, by and through his attorney, Michael Kasper, and objects to the following Request for Subpoena:

Deborah Stanley, the objector, objects to the issuance of this subpoena on the basis of relevance and on the basis that it is designed merely to inconvenience and harass the objector for exercising his rights pursuant to the Illinois Election Code in particular. In addition, any evidence the candidate may wish to solicit from the objector could likely be entered via stipulation, which the candidate has neither sought nor requested.

WHEREFORE, the Objector respectfully requests that the request for subpoena be denied.



Michael J. Kasper
Attorney for Objector

Michael J. Kasper
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601
312.704.3292
312.368.4944 (facsimile)
Attorney No. 33837

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Deborah Stanley,

Petitioner-Objector,

v.

Xavier Roman,

Respondent-Candidate.

No. 12 SOEBGE 503

NOTICE OF FILING

TO: Christine Svenson
christine@svensonlawoffices.com

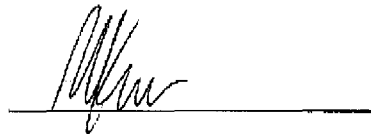
State Board of Elections
217.782.5959

Barbara Goodman
barb@barbgoodmanlaw.com

Please take notice that on Thursday, July 5, 2012, I filed with the State Board of Elections the attached Objection to Issuance of Subpoena, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the attached Objection to Issuance of Subpoena was served upon the parties referenced above by facsimile or email on Thursday, July 5, 2012.



Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (facsimile)
Attorney No. 33837

Witzleb v. Boken Jr.
12 SOEB GE 501

Candidate: Thomas Boken Jr.

Office: State Representative, 90th District

Party: Democratic

Objector: Greg Witzleb

Attorney For Objector: John Fogarty

Attorney For Candidate: Michael Kasper

Number of Signatures Required: Not less than 500

Number of Signatures Submitted: 594

Number of Signatures Objected to: 178

Basis of Objection: Objector alleges that the Candidate's petitions are not uniform or consistent, and do not comply with Section 7-10 because the Candidate's petition sheets contain five different headings.

Objector further alleges that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," and "Signer's Address Missing or Incomplete." Objector also alleges that various signatures are legally defective in that those signers first signed a nominating petition for a candidate of a different established party or for a candidate of a new party.

Dispositive Motions: Candidate's Motion to Strike and Dismiss the Objector's Petition, Objector's Response to Candidate's Motion to Strike and Dismiss,

Binder Check Necessary: Yes

Hearing Officer: Phil Krasny

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that the Candidate's Motion to Strike and Dismiss the Objector's Petition be granted with regards to the issue of the petition heading not being the same as to all of the component sheets. He bases this recommendation on the doctrine of substantial compliance, as all the sheets contained the required information set forth in the Election Code (Candidate name, address, office sought and political party affiliation) and because courts disfavor denying ballot access for technical issues with a petition that do not adversely affect the integrity of the election process as a whole.

In addition, a records examination was conducted on June 26, 2012. Both parties were present at the records exam. The examiners ruled on objections to 178 signatures. 60 objections were sustained leaving 534 valid signatures, which is 34 signatures more than the required 500 minimum number of signatures. As such, the Hearing Officer recommends that the Objection be overruled and the candidate remain on the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

Greg Witzleb

Objector

vs.

Thomas Boken Jr.

Candidate

Board File#: 12 SOEB GP 501

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

I. PROCEDURAL HISTORY

The Candidate, Thomas Boken Jr., has filed nominating petitions in support of his placement on the ballot as the Democratic nominee for the office of Representative in the 90th Representative District of the Illinois General Assembly.

On June 11, 2012, the Objector, Greg Witzleb, filed certain objections to those nominating petitions.

On June 19, 2012, the State Board of Elections ("SBE") appointed Philip Krasny as the Hearing Officer to conduct a hearing on the objections to the nominating petitions and present recommendations to the SBE.

A case management conference was held on June 19, 2012 and was attended by the Candidate's attorney, Michael Kasper. The Objector was represented by John Fogarty.

The Candidate filed a Motion to Strike the Objector's Petition; the Objector filed a Response and the Candidate filed a Reply.

A records exam ("binder check") was conducted in Springfield on June 27, 2012 and the results were provided to the parties.

No Rule 9 material was submitted by either party.

No Rule 9 material was submitted by either party.

On July 3, 2012, a hearing on the objections to the nominating petitions was conducted at the offices of the State Board of Election, Chicago, Illinois. At the hearing, the Objector was represented by John Fogarty. Michael Kasper appeared on behalf of the Candidate.

II. ANALYSIS

MOTION TO STRIKE

The Candidate's Motion to Strike attacks, inter alia, the Objector's claim that inconsistencies in the headings of certain of the Candidate's petitions render the signatures on those petitions moot. Specifically the Objector claims that:

4. The Candidate's petitions, as filed, are not uniform or consistent, and thus do not comply with the Illinois Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that each petition sheet "shall be of uniform size" and that "the heading of each sheet shall be the same." 10 ILCS 5/7-10.

5. The Candidate's petition sheet headings are not all the same. In fact, the Candidate's petition set contains five different headings.

a) The heading on petition sheet~, 15,22,23,26,42,43,46,54,58,59, 61, 62, 64, 66, 67 and 72 declares that the signatures on those sheets purport to be signed by electors from the "90th District of Illinois in the County of --> and the State of Illinois ... " Because the "90th District of Illinois" does not sufficiently describe any particular district or territory, for which the Candidate could be running, these petition sheets are fatally defective.

b.) The heading on petition sheet 1, ,3,7,8, 12, 13, 16, 18,24,25,45,51, 52, 53, 56, 60, 65, 68, and 70 declares that the signatures on those sheets purport to be signed by electors from the "90th House District of Illinois in the County of ___ and the State of Illinois ... "

c.) Petition sheets 5, 6, 9,10,11,17,19,21,44,47,48,49,57, and 63 purport to be signed by electors from the "90th House District of Illinois in the State of Illinois ... "

d) Petition sheets 50 and 55 purport to be signed by electors from the "90th District of Illinois in the County of DeKalb, and the State of Illinois ... "

e) Petition sheets 20 27,28,29,30,31,32,33,34,35,36,37,38,39,40,41, 69, and 71 purport to be signed by electors from the "90th House District of Illinois in the County of Ogle, and the State of Illinois ... " Of these sheets, petition sheet 20 contains the signatures of individuals who do not reside in Ogle County, and are therefore invalid on their face. Lines 1-8 on petition sheet 20 are invalid for this additional reason.

In his Motion to Strike, the Candidate argues that that Section 7-10 of the Election Code is inapplicable to candidates seeking election for the office of State Representative and, even if applicable, any variation in the headings did not cause confusion amongst potential signators.

Courts and electoral boards hesitate to remove candidates for purely technical defects that consist of harmless omissions, inadvertent acts, and grammatical/clerical errors in authentications. *See, e.g., Mason v. Brock*, 12 Ill. App. 273, 279 (1850); *Stout v. Slattery*, 12 Ill. 162 (1850). Further, even mandatory statutory requirements can be excused, as long as there is substantial compliance with the integrity of the political process. In other words, courts have routinely held that substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation of the statute that does not affect the legislative intent to guarantee a fair and honest election. *Williams v. Butler*, 35 Ill. App. 3d 532, 341 N.E.2d 394 (4th Dist.1976), *Siegal v. Lake County Officers Electoral Board*, 385 Ill. App3d 452 (2nd Dist. 2008). *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 768 N.E.2d 216 (1st Dist. 2002).

An inspection of 10 ILCS 5/7-10 is instructive as to how nominating petitions should be formatted.

Each sheet of the petition other than the statement of candidacy and candidate's statement shall be of uniform size and shall contain above the space for signatures an appropriate heading *giving the information as to name of candidate or candidates, in whose behalf such petition is signed; the office, the political party represented and place of residence;* and the heading of each sheet shall be the same.

Using 10 ILCS 5/7-10 as guidance, the nominating petitions challenged by the Objector in the instant case are of uniform size and contain space for signatures. Further, all the petitions contain the name and address of the Candidate and show that the Candidate was affiliated with the Democratic Party and was running to fill a State Representative vacancy for the 90th District, which the Democratic Party did not nominate at the primary. Accordingly, it is the Hearing Officer's recommendation that the format of the Candidate's petitions substantially comply with the Election Code and that the discrepancies noted by the Objector are not substantive and would not cause confusion among voters.

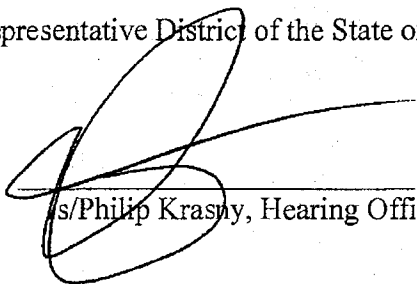
RECORDS EXAM

The minimum signature requirement for State Representative is 500. The Candidate filed petitions containing 594 signatures. A record exam was conducted on June 27, 2012, which resulted in 60 objections being sustained and 118 objections being overruled. That the net valid signatures was 534; 34 more than the 500 statutory minimum.

RECOMMENDATIONS

1) It is recommended that the Candidate's Motion to Strike that portion of the Objector's petition regarding the claim that the Candidate's petitions should be stricken since they are not uniform and do not comply with the Illinois Election Code, should be granted.

2) It is recommended that the name of the Candidate, Thomas Boken Jr., should remain on the ballot for the office of Representative in the General Assembly as the Democratic nominee for the 90th Representative District of the State of Illinois.



7/5/12
/s/Philip Krasny, Hearing Officer

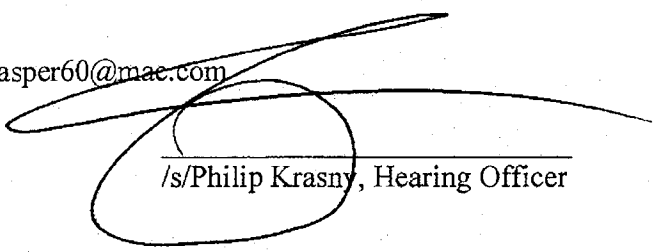
CERTIFICATION

The undersigned certifies that on July 5, 2007 the FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER was forwarded via e-mail to:

Steve Sandervoss at ssandvoss@elections.il.gov
General Counsel State Board of Elections

John Fogarty at John@fogartylawoffice.com and fogartyjr@gmail.com
Attorney for Objector

Michael Kasper at mjkasper60@mac.com
Attorney for candidate



/s/Philip Krasny, Hearing Officer

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL
ASSEMBLY FROM THE 90th REPRESENTATIVE DISTRICT OF THE STATE OF
ILLINOIS**

Greg Witzleb)
)
Petitioner-Objector,)
)
vs.)
)
Thomas Boken Jr,)
)
Respondent-Candidate.)

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STATE BD OF ELECTIONS
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AT 2012 JUN 11 2 56 PM
BH

VERIFIED OBJECTOR'S PETITION

Now comes Greg Witzleb (hereinafter referred to as the "Objector"), and states as follows:

1. Greg Witzleb resides at 881 White Oaks Drive, Dixon, Illinois 61021, in the Ninetieth Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Representative in the General Assembly from the Ninetieth Representative District of the State of Illinois, are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of Thomas Boken Jr ("the Nomination Papers") as a candidate for nomination of the Democratic Party to the Office of Representative in the General Assembly from the 90th Representative District of the State of Illinois, and files the same herewith, and states that the said Nomination Papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the 90th Representative District of the State of Illinois the signatures of not less than 500 duly qualified, registered, and legal voters of the said 90th Representative District of the State of Illinois are required. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

The Candidate's Petitions Are Not Uniform Or Consistent As Required By The Election Code

4. The Candidate's petitions, as filed, are not uniform or consistent, and thus do not comply with the Illinois Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that each petition sheet "shall be of uniform size" and that "the heading of each sheet shall be the same." 10 ILCS 5/7-10.

5. The Candidate's petition sheet headings are not all the same. In fact, the Candidate's petition set contains five different headings.

- a. The heading on petition sheets 4, 14, 15, 22, 23, 26, 42, 43, 46, 54, 58, 59, 61, 62, 64, 66, 67 and 72 declares that the signatures on those sheets purport to be signed by electors from the "90th District of Illinois in the County of _____, and the State of Illinois . . ." Because the "90th District of Illinois" does not sufficiently describe any particular district or territory, for which the Candidate could be running, these petition sheets are fatally defective.
- b. The heading on petition sheets 1, 2, 3, 7, 8, 12, 13, 16, 18, 24, 25, 45, 51, 52, 53, 56, 60, 65, 68, and 70 declares that the signatures on those sheets purport to be signed by electors from the "90th House District of Illinois in the County of _____ and the State of Illinois . . ."
- c. Petition sheets 5, 6, 9, 10, 11, 17, 19, 21, 44, 47, 48, 49, 57, and 63 purport to be signed by electors from the "90th House District of Illinois in the State of Illinois . . ."
- d. Petition sheets 50 and 55 purport to be signed by electors from the "90th

District of Illinois in the County of DeKalb, and the State of Illinois . . .”

- e. Petition sheets 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 69, and 71 purport to be signed by electors from the “90th House District of Illinois in the County of Ogle, and the State of Illinois . . .” Of these sheets, petition sheet 20 contains the signatures of individuals who do not reside in Ogle County, and are therefore invalid on their face. Lines 1-8 on petition sheet 20 are invalid for this additional reason.

The aforesaid failures to comply with the Election Code, in the aforesaid commingling of various formats of the Candidate’s purported petitions renders the entire petition set invalid.

The Candidate Has An Insufficient Number Of Signatures To Qualify For Office

6. Your Objector states that the Candidate has filed 72 petition signature sheets containing a total of 584 signatures of allegedly duly qualified, legal, and registered voters of the 90th Representative District of the State of Illinois.

7. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

8. Your Objector further states that the aforesaid nomination papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 90th Representative District of the State of Illinois and their signatures are therefore invalid, as more fully set forth in the Appendix Recapitulation under the column designated “SIGNER NOT REGISTERED AT ADDRESS SHOWN (A),” attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

9. Your Objector further states that the said nomination papers contain the names of numerous persons who have signed said petition but who are not, in fact, duly qualified, registered, and legal voters at addresses that are located within the boundaries of the 90th

Representative District of the State of Illinois as shown by the addresses they have given on the petition, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT (B)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

10. Your Objector further states that the said nomination papers contain the names of numerous persons who did not sign the said nomination papers in their own proper persons, and that the said signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNATURE NOT GENUINE (C)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

11. Your Objector further states that said nominating petition contains the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation, under the column designated "SIGNED PETITION MORE THAN ONCE (D)," with a further notation therein of the sheet and line numbers of the alleged duplicate signature(s) as Sh. ___, L. ___, attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

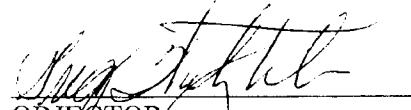
12. Your Objector states that various purported signatures are legally defective and deficient in that the address shown next to said voter's name is incomplete, as more fully set forth in the Appendix-Recapitulation, under the column designated "Incomplete Address (E)" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

13. Your Objector states that various purported signatures are legally defective and deficient in that those signers signed first a nominating petition for a candidate of a different established party or for a candidate of a new party, as more fully set forth in the Appendix-Recapitulation, under the column designated "Signed First For Opposing Party (F)" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

14. Your Objector states that the nomination papers herein contested consist of various sheets supposedly containing the valid and legal signatures of 584 individuals. The individual objections cited herein with specificity reduce the number of valid signatures by 179 or to 405, which is 95 signatures below the statutory minimum of 500.

WHEREFORE, your Objector prays that the purported nomination papers of Thomas Boken Jr as a candidate of the Democratic Party for the office of the Representative in the General Assembly from the 90th Representative District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Thomas Boken Jr as a candidate of the Democratic Party for the office of the Representative in the General Assembly from the 90th Representative District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT at the General Election to be held on November 6, 2012.

Respectfully submitted,


OBJECTOR
Greg Witzleb

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VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that [he] [she] has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [he] [she] verily believes the same to be true and correct.

and correct.

Greg Shafelt
OBJECTOR

County of Deer)
)
State of Illinois) ss.

Subscribed to and Sworn before me, a Notary Public, by Fred Witzleb, the
Objector, on this the 11th-day of June, 2012, at Dixon, Illinois.

Cathy M. Myers (SEAL)
NOTARY PUBLIC



My Commission expires: 1-6-2016

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Witzleb,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 12-SOEB-GE-501
)	
Boken, Jr.,)	
)	
Respondent-Candidate.)	

MOTION TO STRIKE

NOW COMES, Candidate, by and through his attorney, Michael J. Kasper, and moves to strike paragraphs four and five of the Objector's Petition and in support thereof states as follows:

The Heading of the Candidate's Petition Sheets Satisfies
The Election Code.

Paragraphs 4 and 5 should be stricken because they are the ultimate exercise in putting form over substance. The Candidate is seeking to fill the vacancy in the Democratic nomination for the office of State Representative from the 90th Representative District. This is plainly written on each and every petition sheet. In the very center of the petition in the box headed "OFFICE (and district if any)" appear the words "State Representative 90th District." No other district number or name appears anywhere on the petition. As a result, it is impossible for any petition signer (or even an objector) to be the slightest bit confused.

Instead, Objector takes issue with slight (and completely meaningless) variations in the prefatory paragraph – none of which have the slightest consequence. Each petition sheet includes the words "90th" and "District." Some include the word "House" and

some include Illinois. Objector claims that these completely non-substantive variations render the nomination papers invalid. This is incorrect for at least two reasons.

First, Objector cites the wrong statute for the proposition that the heading of each sheet must be the same. Objector cites Section 7-10 of the Election Code, but this candidate is being nominated for the office of Representative in the General Assembly, which is governed by Article 8 of the Election Code. 10 ILCS 5/8-1 et. seq. Section 8-8, which governs the contents of nominating petitions for General Assembly candidates, contains no similar provision that the heading of each sheet be the same. Had the General Assembly wanted to make such a provision for General Assembly candidates, it certainly could have done so.

Second, even if the provision of Section 7-10 does apply, the Candidate's nominating petitions substantially comply with the requirement. Not only are the variations entirely non-substantive, but the slight variations cannot cause any confusion. The Board can certainly take notice of the fact that the only "90th district" anywhere in Illinois is the 90th Representative District. More importantly, the presence of the words "State Representative 90th District" in the box on the same petition sheets cures any technical noncompliance.

Substantial compliance can satisfy a mandatory provision of the Election Code, however, as even a mandatory provision does not require strict compliance. *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452, 460 (2008). This court has held that substantial compliance with the circulator's affidavit requirement saves a petition sheet from being rendered invalid. See, e.g., *Brennan v. Kolman*, 335 Ill.App.3d 716, 719 (2002)(circulators' affidavits that failed to state that voters who signed the

petition were registered voters substantially complied with Election Code, where opening line of petition stated that voters were registered); see also *Nolan v. Cook County Officers Electoral Board*, 329 Ill.App.3d 52, 54, 56–57 (2002) (finding circulators' affidavits that failed to state that petition signers were qualified primary voters substantially complied with section 8–8 where prefatory language on the petition indicated that signers were “qualified primary voters”).

In considering provisions of the Election Code, we are mindful that “ballot [access] is a substantial right and not to be lightly denied.” *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, --- N.E.2d ----, 2012 WL 1592200 (1 Dist., 2012) citing *Siegel*, 385 Ill.App.3d at 460–61. The *Cunningham* court also recognized that “[o]ur supreme court has instructed we should ‘tread cautiously when construing statutory language which restricted the people's right to endorse and nominate the candidate of their choice.’” *Id.* quoting *Lucas v. Lakin*, 175 Ill.2d 166, 176 (1997).

It is hard to imagine a pettier reason to restrict the people’s right to nominate candidate than these meaningless differences in the heading of the Candidate’s petitions. Paragraphs four and five should be stricken.

Paragraphs 4 and 5 are without merit and should be stricken.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Strike Paragraphs 4 and 5 be granted.

Respectfully submitted,
Candidate

By: _____
One of his attorneys

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL
ASSEMBLY FROM THE 90th REPRESENTATIVE DISTRICT OF THE STATE OF
ILLINOIS**

Greg Witzleb)
)
Petitioner-Objector,)
)
vs.)
)
Thomas Boken Jr,)
)
Respondent-Candidate.)

RESPONSE TO MOTION TO STRIKE

Now comes the Objector, Greg Witzleb, by and through his attorney, and for his Response to the Candidate's Motion to Strike ("the Motion"), and states as follows:

1. The Candidate moves to strike Paragraphs 4 and 5 of the Objector's Petition. Said paragraphs take issue with the Candidate's nominating papers insofar as that petition set contains petitions with five different headings.

2. The Candidate's Motion should be denied. The Illinois Election Code requires that "the heading of each [petition] sheet shall be the same." 10 ILCS 5/7-10. The uniformity requirements of Section 7-10 are mandatory requirements of the Election Code that demand strict compliance. *Bowe v. Chicago Electoral Board*, 79 Ill.2d 469, 404 N.E.2d 180 (1980); *Lawlor v. Municipal Officers Electoral Board*, 28 Ill.App.3d 823, 329 N.E.2d 426 (1st Dist. 1975). Even a mandatory requirement, however, may be satisfied by substantial compliance. *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452 (2nd Dist. 2008).

3. The rationale for requiring uniformity in a candidate's petitions is to promote the orderly conduct of the electoral process. Here, it is uncontroverted that the headings on the

Candidate's petitions are not the same, and in fact, there are five different styles used by the Candidate. The question for this Honorable Electoral Board is to determine whether a set of petitions that exhibits this degree of non-compliance with the statute can be considered to "substantially comply" with the statute. The Objector posits that such non-compliance cannot satisfy the statute.

4. For instance, one of the formats utilized by the Candidate purports to be signed by the electors from the "90th House District of Illinois in the County of Ogle, and the State of Illinois . . ." However, at least one of the sheets that utilizes this format (sheet 20) features signatures that, on their face, are not made by residents of Ogle County, as the petition heading advertises. Those signatures, based on the preamble on those sheets, should be found to be invalid.

5. The Candidate argues that Section 7-10 of the Election Code is inapplicable to petitions filed by a candidate for the legislature, and that their filings are governed exclusively by Article 8. While it is true that Article 8 addresses legislative filings, it does not follow that because no format is explicitly prescribed in Article 8 that there is no format (or uniformity) requirement whatsoever for legislative candidates. Such a reading of the statute would only lead to absurd results.

WHEREFORE, for these reasons, the Candidate's Motion to Strike must be denied.

Respectfully submitted,
OBJECTOR
Greg Witzleb

By: /s/ John G. Fogarty, Jr. /s/
One of his Attorneys

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